

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONSOLIDATED UNDER
CASE NO. 05-10155 PBS

YISEL DEAN, Independent Administratrix of the Estate of
STEVEN DEAN, deceased, and on behalf of all statutory
beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10155 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air
Express,
Defendants.

LISA A. WEILER, Administratrix of the Estate of SCOTT A. KNABE, deceased, and on behalf of all statutory beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10364 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air Express,
Defendants.

**DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF FAA SERVICE
DIFFICULTY REPORTS**

The defendants hereby respectfully move for an order *in limine* precluding the plaintiffs from introducing any FAA Service Difficulty Reports (“SDR’s”) related to the Beech 1900, or from any of plaintiffs’ experts testifying about SDR’s related to the Beech 1900.¹ In his expert report, plaintiffs’ expert, Donald E. Sommer, states that he reviewed SDR’s for the accident aircraft. Specifically, eighty-two reports were reviewed using the key words “cable” and “B1900.” According to Mr. Sommer’s report, numerous incidents were found with elevator and trim control cable problems, jams, and malfunctions. He also notes that in one report, it was noted that the ailerons had been hooked up in reverse.

At his deposition, Mr. Sommer was questioned about his reference to SDR’s in his expert report. Mr. Sommer testified that he had his staff search the Internet for SDR’s using the words “cable” and “B1900.” (Deposition of Donald Sommer, pp. 129-130, attached hereto as **exhibit 1**). SDR’s are typically made by a mechanic, or someone else out in the field, and are generally used for trend data. (**Exhibit 1** at p. 132.) The form on which an SDR appears provides only a few lines for the reporter to describe a problem. Mr. Sommers looked only at printouts of SDR’s, not the SDR itself, when compiling reports that he believed were relevant to this action. (**Exhibit 1** at pp. 133-134). Other than reading the problem descriptions, Mr. Sommers did not do any additional investigation to determine the causes of each of the events contained in the SDR’s. (**Exhibit 1** at p. 134). Mr. Sommers did not attempt to analyze only SDR’s that predate the subject accident, and as such, many of the SDR’s he relies upon relate to incidents after this accident. (**Exhibit 1** at pp. 134-135).

Under Massachusetts law, in order for a party to offer evidence of a previous incident, it must be shown that a “substantial identity of the circumstances” exists between the prior incident

¹ Service Difficulty Reports are submitted to the FAA by certificate holders and certificated repair stations, and provide the FAA with airworthiness data necessary for planning, directing, controlling, and evaluating certain assigned safety-related programs.

and the incident at issue. Robitaille v. Netoco Community Theaters of North Attleboro, Inc., 305 Mass. 265, 267, 25 N.E.2d 749, 750 (1940). Massachusetts courts employ the “substantially identical” standard, enunciated in Robitaille, in ruling on the admissibility of prior accidents. See e.g., Kromhout v. Commonwealth, 298 Mass. 687, 500 N.E.2d 789 (1986); Croall v. Massachusetts Bay Transportation Authority, 26 Mass. App. Ct. 957, 526 N.E.2d 1320 (1988); Read v. Mt. Tom Ski Area, Inc., 37 Mass. App. Ct. 901, 639 N.E.2d 391 (1994). The Massachusetts Court of Appeals has stated that evidence of similar accidents is admissible “to prove a defendant’s knowledge of a dangerous condition only upon a showing, by its proponent, that the circumstances of the other accidents were ‘substantially identical’ and the danger of confusion, undue waste of time, or unfairness appears small.” Read, 37 Mass. App. Ct. at 902.

Here, any evidence of SDR’s, including print-outs of reports, reports themselves, or any testimony regarding SDR’s must be precluded. There has been no showing of a substantial identity of circumstances of any incidents described in the SDR printouts reviewed by Mr. Sommers and the subject accident. Although Mr. Sommers claims that he found numerous incidents involving elevator and trim control cable problems, he did no further research to determine any additional circumstances regarding the incidents. There is no evidence that any of the incidents involved a purported erroneous pictograph of the trim tab cable drum or that a REPS did not list the operational check in the table of contents or provide a link to the operational check. Indeed, there could be no such evidence given that Mr. Sommers merely relied on a few sentences describing a problem without delving further into the events and circumstances surrounding the incidents reported in the SDR’s. As such, there is no evidence of substantial identity of any of the circumstances surrounding the events leading to the SDR’s filed

before the accident and the subject accident, and thus, any evidence regarding those SDR's must be precluded.

Similarly, any evidence relating to SDR's filed after the subject accident must also be excluded. As an initial matter, there has been no showing that any of the SDR's filed after the subject accident relate to incidents which bear any resemblance to the accident. Nonetheless, any incidents described in such SDR's cannot be used to establish a dangerous or defective condition, or notice of knowledge of a dangerous or defective condition by Raytheon. Evidence of SDR's filed after the date of the subject accident will only serve to prejudice Raytheon and confuse the jury. Additionally, there is no probative value to any of those SDR's, as they are completely irrelevant to the merits of this case. Fed. R. Evid. 403.

Additionally, the SDR's contain descriptions of problems and incidents by mechanics or other persons in the field, and thus, constitute inadmissible hearsay, and therefore, all SDR's must be excluded on that basis as well. Fed. R. Evid. 802.

WHEREFORE, the defendants hereby respectfully move for an order *in limine* precluding the plaintiffs from introducing any FAA Service Difficulty Reports related to the Beech 1900, or from any of plaintiffs' experts testifying about SDR's related to the Beech 1900.

RAYTHEON DEFENDANTS,
By Counsel,

/s/ Peter C. Knight

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I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 26, 2007.

/s/ Peter C. Knight

-AND-

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EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 CONSOLIDATED UNDER CASE NO. 05-10155 PBS

4 DEPOSITION OF: DONALD E. SOMMER
5 EXAMINATION DATE: October 24, 2006

6 YISEL DEAN, et al.,
7 Plaintiffs,

8 v. Case No. 05 CV 10155 PBS

9 RAYTHEON COMPANY, a Delaware
10 corporation, RAYTHEON AIRCRAFT HOLDINGS,
11 INC., a Delaware Corporation, RAYTHEON
12 AIRCRAFT COMPANY, a Kansas Corporation,
13 RAYTHEON AIRCRAFT CREDIT CORPORATION,
14 a Kansas Corporation,
15 Defendants.

16 LISA A. WEILER, et al.
17 Plaintiffs,

18 v. Case No. 05 CV 10364 PBS

19 RAYTHEON COMPANY, a Delaware
20 corporation, RAYTHEON AIRCRAFT HOLDINGS,
21 INC., a Delaware Corporation, RAYTHEON
22 AIRCRAFT COMPANY, a Kansas Corporation,
23 RAYTHEON AIRCRAFT CREDIT CORPORATION,
24 a Kansas Corporation,
25 Defendants.

26 PURSUANT TO NOTICE, the deposition
27 of DONALD E. SOMMER was taken at 8:55 a.m., on
28 October 24, 2006, at 1700 Broadway, Suite 1020,
29 Denver, Colorado 80290, before Patricia S.
30 Newton, Registered Professional Reporter and
31 Notary Public in and for the State of Colorado,
32 said deposition being taken pursuant to the
33 Federal Rules of Civil Procedure.

1 expect an operational check would be performed.

2 Q (BY MR. JONES) Did you have
3 access to Colgan's CAMP data that would reflect
4 the detail of logbook maintenance entries?

5 A I would have to research that
6 question a little more. It may be on one of
7 these CDs that I have had supplied to me. I just
8 don't remember whether it was actual CAMP data or
9 whether it was secondary data derived from the
10 CAMP data.

11 Q What type of secondary data
12 derived from CAMP data are you thinking of?

13 A Well, other people's report of
14 what the CAMP data says.

15 Q For example, if an NTSB report
16 had said, "We found this in the CAMP data,"
17 that's what you're talking about?

18 A Yes, exactly.

19 Q The next paragraph on page 6
20 speaks of "FAA Service Difficulty Reports."
21 What's the source of that info?

22 A The FAA.

23 Q And those are available online,
24 aren't they?

25 A Yes.

1 Q So you reviewed those why?

2 A Because I wanted to find out if
3 there was any other problems similar to the
4 accident problem.

5 Q And the way you went about doing
6 it is just searching for cable and B1900?

7 A Yes, sir.

8 Q Is that some work you did or your
9 staff did?

10 A My staff did that per my request.

11 Q And what was your purpose in
12 reporting these Service Difficulty Reports?

13 A Well, anytime you investigate an
14 accident, you like to look and see what, if any,
15 previous history of similar problems exist in the
16 field. And we typically do these type of
17 searches for many of the airplane crashes that we
18 investigate.

19 Q Do you have a file in your Red
20 Rope here that's specific to that inquiry?

21 A Yes.

22 Q I'm marking your folder marked
23 "Colgan Air SDR's" as 117. The top three pages
24 seem to be a typewritten listing of SDRs found.
25 Is that something your staff put together?

1 Beech 1900 fleet.

2 Q And you're getting that from
3 reviewing those SDRs on the FAA's Website?

4 A Yes, in part.

5 Q And an SDR is just a report from
6 someone in the field that, on this form that the
7 FAA provides, you can say what happened with your
8 particular aircraft, correct?

9 A Well, a Service Difficulty Report
10 is a report from usually a mechanic, although it
11 doesn't have to be a mechanic, of specific
12 problems related to specific systems with
13 specific aircraft. It's generally used for trend
14 data; and it's used to determine, A, where to
15 look when one has the types of problems that are
16 relevant to the SDRs; and, B, what the cause and
17 effect of some of those problems in aircraft
18 operation has been in the past.

19 Q May I see that file?

20 A Sure.

21 Q The form itself just provides one
22 field to describe what really happened, doesn't
23 it: Field No. 4?

24 A Yeah, it provides, under Item 4,
25 "Problem Description."

1 Q So for each one of these SDRs, we
2 have a few lines for each event of a mechanic or
3 whoever the reporter is describing what happened?

4 A Not necessarily. I've seen whole
5 pages written on SDRs before.

6 Q On these?

7 A This isn't the SDR; this is the
8 printout of the SDR itself. The SDR is on a
9 small piece of paper, about maybe 4 inches by 8
10 1/2 inches. And it's also noted on the SDR, per
11 my recollection, that if you need additional
12 space, you attach a piece of paper to it.

13 Q Did you get the fuller version of
14 these particular SDRs for your work on this
15 case --

16 A Well --

17 Q -- or are they in this file?

18 A -- for instance, there's a
19 readout here that has six lines in the Problem
20 Description.

21 Q But this file contains --

22 A Here's one that has 10 lines or
23 so on the "Problem Description." This is just a
24 computer printout; this isn't a form.

25 Q But this is the extent of the SDR

1 study you did for purposes of your work, right?

2 MS. SCHIAVO: Objection, for the
3 record. Go ahead.

4 A Yes.

5 Q (BY MR. JONES) You didn't dig
6 behind each one of these events to learn any more
7 about them besides reading what's on these forms?

8 A Correct.

9 Q But nonetheless, from your review
10 of a description ranging anywhere from two to 10
11 lines, you identify a trend of problems with
12 elevator trim in the 1900D?

13 A What I identified is what it says
14 in the report: that numerous incidences were
15 found with elevator and trim control cable
16 problems, jams, and malfunctions.

17 Q But you didn't undertake to
18 determine what the reasons for each of those
19 events were, did you?

20 A Other than what it indicates in
21 the Problem Description; I didn't go further than
22 that.

23 Q May I have it?

24 Just looking at the listing of them,
25 would you agree with me that half of those you

1 reference postdate the accident in this case?

2 A I haven't done the study, but I
3 can do it real quick, if you like.

4 Q Well, the document, I guess, will
5 speak for itself.

6 A Sure.

7 Q But let me, I guess, come at the
8 it this way: Did you undertake, in your analysis
9 of SDRs, to focus only on those that predated
10 this accident?

11 A No.

12 MR. JONES: I think now is
13 probably as good a time as any to break for
14 lunch.

15 THE DEPONENT: I was just going
16 to second that.

17 (Recess from 12:08 to 1:29 p.m.)

18 Q (BY MR. JONES) During the break,
19 I took some time to slap some stickers on more of
20 your stuff you brought with you just so that we
21 can identify them and copy them as needed.

22 So to cover some housekeeping matters,
23 I've got two stacks of CDs: One I could just
24 give back to you. We don't need any of those.
25 The other one I put stickers on, and I want to